

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – JULY 27, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:02 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, Tate and Chairperson/Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

Chairman/Mayor Kennedy announced that recently, Michael Crocker, a former teacher, principal of Jackson Elementary School, and a member of the community, passed away; a victim to cancer. He stated that he attended a funeral held last night; indicating that Mr. Crocker will be missed. He stated that the Council will be adjourning the meeting in memory of Mr. Crocker.

PLEDGE OF ALLEGIANCE

CITY COUNCIL SUBCOMMITTEE REPORTS

Mayor Pro Tempore Tate reported that the Financial Policy Committee met earlier this evening and that the Committee will be preparing a recommendation for Council consideration on retaining the services of a consultant who will assist the City in a year long community conversation. He stated that the recommendation will be presented to the Council on August 24, 2005.

OTHER REPORTS

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda. Dan Craig, Executive Director of the Morgan Hill Downtown Association, informed the Council/Agency Board and the public that restaurants in the downtown have started an outdoor dining concept along Monterey Road. He felt that outside dining has made a great appearance on the streets as it generates more activity and foot traffic in the downtown. It is the Association's hope that there will be more outside dining and individuals patronizing the downtown. No further comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Chairman Kennedy requested that items 1 and 3 be removed from the Consent Calendar.

Action: *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 2 and 4 as follows:*

2. **PRELIMINARY JUNE 2005 REDEVELOPMENT AGENCY FINANCE AND INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

4. **INTERIM LOAN FOR ROYAL COURT HOUSING PROJECT**

Action: ***Authorized** the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute and Implement, Subject to Agency Counsel Review and Approval, a Loan Agreement with South County Housing in an Amount not to Exceed \$1.9 Million for the Royal Court Housing Project.*

1. **CASA DIANA MIXED-USE PROJECT – SECOND LAND ACQUISITION LOAN**

Chairman Kennedy stated that he wanted to make sure that for-sale housing units were a part of this project and that it was his understanding that this is not the case with this loan.

Director of Business Assistance and Housing Services Toy said that the project is located on Dunne Avenue, by the railroad tracks; adjacent to Mama Mia's Restaurant. He stated that the project would include a combination of affordable rental units, for-sale ownership units and a commercial project along Butterfield Boulevard. He informed the Agency Board that 70-80 affordable units are proposed as part of phase I of the project. Phase II of the project is envisioned to be 50-70 for sale/ownership type units, mixed with a commercial portion of the project. He stated that the concept is to proceed with the rental affordable units and to wait to define where the ownership component would be located. He said that it is his understanding that the Council would like staff to take a look at including for-sale ownership units as part of Phase I of the project. He indicated that staff is in conversation with the project proponent, EAH, about this. He stated that typically, EAH finds a partner who will develop the for-sale portion of a project. Staff will need to pursue this and determine how many of the for-sale units would be involved and how the phasing would work. He felt that staff could address ownership units as part of the master plan.

Chairman Kennedy stated that he would not feel comfortable moving forward with Phase I without the for-sale units. He inquired whether there would be an adverse impact to the schedule if the City takes time to address this issue.

Mr. Toy informed the Agency Board that EAH needs the City to provide funding so that they can proceed with the purchase of the property. It was his belief that escrow would close in mid August. It is

his hope that EAH could purchase the property while staff works out the details. He indicated that staff would return with a disposition and development agreement (DDA) or owner participation agreement to the Agency Board in the future. He noted that there is an October 3, 2005 deadline for the submittal of a Measure C application. Staff needs to make sure that everything is in order so that the applicant meets the deadline for Measure C submittal. However, it was staff's belief the City has time to figure out how the for-sale units can be included as part of Phase I.

Chairman Kennedy inquired whether approval can be conditioned such that for-sale housing units are to be a part of Phase I.

Mr. Toy said that staff would need to return to the Agency Board with a DDA to incorporate for-sale units. However, it could be possible that for-sale units may not work as part of Phase I. He indicated that the recommendation is that the Agency Board approves a loan to purchase the property. Staff would return to the Agency Board with a DDA and talk about phasing of the project. At that time, the Council may decide it would like to proceed in a different path. However, with the October 1, 2005 Measure C filing deadline coming up, it may be problematic. He clarified that Chairman Kennedy's request can be addressed at a later date without jeopardizing the project. He said that staff understands the Agency Board's direction in trying to include ownership units within the project. He said that staff does not know where the for-sale units would be located, and whether they can be phased. He noted that Measure C has a limited amount of units and that EAH needs to determine the priority of the units. It was his belief that South County Housing would also be applying for the for-sale ownership allocations.

Mayor Kennedy stated that he would not be supporting the request this evening.

Agency Member Carr noted that the action before the Agency Board this evening is to provide financial assistance to EAH to purchase the property. It is not to help EAH design their project. He stated that the Agency Board could approve the recommended action and assist EAH in meeting their funding deadline for acquiring the property. The Agency Board can place other limits as far as their ability to apply and/or be awarded Measure C allocations. He said that the Agency Board can approve or disapprove the DDA when it returns to the Agency Board if the project does not provide the housing units desired; inhibiting their ability to apply under Measure C.

Mr. Toy said that EAH could assign the rights of the property to the City. The City would then forgive the loan and own the property.

Executive Director Tewes indicated that when the Agency Board discussed the project months ago, the Board indicated that it wanted staff to ensure that the mixed use project includes for-sale housing. Staff and EAH advised the Agency Board, at that time, that there were risks and concerns about converting units into condo units. The Agency Board made clear, that as part of the loan to be approved, the City could purchase the property. The City could work toward developing an appropriate mixed use project should EAH be unable to deliver the mixed use project as established by the Agency Board as a policy direction.

Mayor Kennedy stated that he would withdraw his objection with the understanding that it is his

expectation that there will be for-sale units as part of the project.

Action: *On a motion by Chairman Kennedy and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute and Implement a Loan Agreement with EAH, Inc., Subject to Review and Approval of Agency Counsel, for a Loan up to \$1,100,000 for EAH to Acquire a Third Parcel for the Casa Diana Housing/Commercial Mixed-Use Project.*

3. OPTION AGREEMENT FOR 55 EAST FOURTH STREET PROPERTY

Chairman Kennedy noted that the appraised value for the property was based on an old appraisal. He inquired whether staff has a more recent appraisal.

Director of Business Assistance and Housing Services Toy indicated that the value of the property was based on the value of the library property when the City talked about a ground lease in the downtown. Staff felt that this was the market rate value for the property and that staff applied the same asking price. He indicated that staff could request an updated appraisal as part of the transaction.

Agency Member Sellers inquired whether there was a timing issue should the Agency Board request an updated appraisal. He felt that the price of the property appears to be in line with what other properties in the downtown have been selling for recently.

Mr. Toy indicated that an appraisal would take 4-6 weeks to prepare. He said that it was his belief that the developer would like to take control of the property in order to proceed with a Measure C application.

Agency Member Sellers said that the Agency Board received questions from the developer that raised larger issues about the development of the entire block. He felt that there were still several questions that need to be answered to reassure the developer and to make sure that the City is heading in the right direction. He inquired as to the next steps.

Mr. Toy said that staff spoke with the developer today and that it was staff's belief that some of the issues can be resolved, administratively. He informed the Agency Board that the developer would be entering into a disposition and development agreement (DDA) for the property. The developer is concerned that entering into a DDA would not give him control in the future. He said that this issue was clarified. He stated that it has always been the vision that the home would be relocated at time of construction. The Agency Board requested an option to close on the property in order to coincide with commencement of construction in June 2007. Staff does not believe this condition to be unreasonable. He said that the outstanding issue relates to environmental review. He stated that typically, the buyer would conduct phase I and phase II environmental work. At issue is what happens if something is found as part of the environmental review. In terms of the purchase price, it was staff's belief that the price was at market rate. Therefore, staff did not order an appraisal. However, staff could order an appraisal, but that it would defer the time for the option agreement as it needs to include a price. He noted that the DDA would address conformance of the project with the downtown plan and the parking plan.

Vice-chairman Tate felt that the DDA would address/resolve some of the issues.

Agency Member Grzan inquired as to what point the City would decide whether it would use an estimate from a previous project and when to decide that an updated appraisal is needed.

Mr. Toy said that initially, the estimate was a market rate price and that staff would be able to find comparables to justify the price. Therefore, staff did not order an official appraisal. He said that some point down the line, staff would get an appraisal as part of the transaction of the DDA. It was his belief that the Agency Board could structure the purchase price on this price or an appraised value, whichever is higher. He said that the need for appraisals varies; depending on the transaction.

Agency Member Grzan did not know if he could support a motion because he would want to receive an appraisal. He did not know whether the Agency Board should approve this item based upon receiving an appraisal, replacing the purchase amount based on the appraisal.

Interim Agency Counsel Siegel stated that the Agency Board could substitute the agreement with language that stipulates that an appraisal is to be prepared by a certified appraiser and decide how the appraiser is to be paid. However, at this point, two things could take place: 1) the Agency Board could be placed at risk as the price could be significantly less; and 2) since the option is for a very long period with the entire deposit being refundable, it gives the purchaser tremendous control over vetoing the price when the appraisal returns. He noted that this is a one way option and that the Agency Board would be stuck with the appraisal price, regardless.

Executive Director Tewes explained why staff believes this is the appropriate approach. He indicated that this property owner made a proposal to the City to construct a library in the downtown on a ground lease. The proposal indicated what the property owner thought the land was worth. He said that staff consistently committed that an appraisal was needed as it was felt that the price was high. In this instance, the same property owner wants to receive an option on City property. Staff picked the same purchase price that the property owner previously identified.

Agency Member Grzan felt that the Agency Board should do the right thing and receive an appraisal.

Executive Director Tewes noted Mr. Toy has suggested that the option price be the fixed number or the appraisal price, if higher.

Chairman Kennedy and Agency Member Grzan stated that they would support incorporating Mr. Toy's suggestion.

Chairman Kennedy opened the floor to public comment.

Rocke Garcia stated that it was his belief that the offer price is higher than what the property is worth. He said that the property is key to him as it would enable him to control the entire "Sunsweet" block. In order to be able to submit for Measure C allotment, he is required to have property control. Should the

Agency Board decide that it wants an appraisal, he suggested that the City receive an appraisal and that he would agree to the preparation of a different appraisal, agreeing to a median purchase price as part of the option agreement. However, he stated that he was comfortable with the price as listed. He indicated that he needs resolution in order to submit for Measure C. He said that he has met with his architect and land planner in order to submit for Measure C. If he does not have control of the property, it would make no sense to proceed with the submittal of a Measure C application this year.

Executive Director Tewes stated that he would not recommend the approach as suggested by Mr. Garcia for the reasons stated by the Interim Agency Counsel. It is also not a good business practice to have two appraisals preformed and then split the difference using public resources. He stated that the City needs to establish the value that a buyer and seller are willing to agree to. He did not believe that the City should be negotiating a price in the manner suggested.

Agency Member Grzan indicated that he supports Interim Agency Counsel Siegel's recommendation. If the applicant and Director of Business Assistance and Housing Services are stating that the price of the land is high, the City would find this out. Should it result in a low appraisal, the City would still agree to what the applicant is willing to pay. He felt that in good conscience, the City needs to proceed in securing an updated appraisal.

Vice-chairman Tate stated that he would like to follow the recommended action as stated by staff. He noted that the City has an applicant who is willing to go along with the fixed price agreed to by all parties. There is no need to wait for additional information or changes as everyone is in agreement with the recommended action.

Agency Member Sellers concurred with the comments expressed by Vice-chairman Tate.

Action: *Vice-chairman Tate made a motion, seconded by Agency Member Sellers, to **Authorize** the Executive Director to Execute, Including Making Modifications as needed and Subject to Agency Counsel Review and Approval, an Option Agreement for the Sale of 55 East Fourth Street to Glenrock Builders, or Its Designee, in the Amount of \$303,481 Plus Customary Escrow/Closing Costs.*

Executive Director Tewes indicated that it was his understanding that the motion would adopt staff's recommendation, clarifying that it is staff's recommendation that the option price be based on the value. He indicated that staff would also support, the alternative of the option being established as this price on the appraisal, if higher.

Action: *Vice-chairman Tate made a motion, seconded by Agency Member Grzan, to **Amend** the motion to stipulate the alternative option.*

Agency Member Carr indicated that he was not comfortable with the amended motion. He stated that he was supportive of staff's recommended action. He noted that the Agency Board has been stating for years that these combined pieces of property are key to the improvements that the City wants to perform in the downtown. He said that he does not have any indication that this is not a good deal for the City.

Had information been presented to this affect, the Agency Board would have to take a look at the information. He did not see any reason to delay moving forward with what is a very important piece to improving the downtown. Therefore, he would not be supportive of delaying the action further. Requesting an appraisal may potentially jeopardize the developer's ability to apply under Measure C this competition; resulting in the project being two years off before being able to develop.

Agency Member Grzan said that he has noticed that a number of issues come before the Council/Agency Board and that often times, decisions are made based upon pressures of time. He stated that he would like the Council/Agency Board to get away from having to make decisions because it is stated that time is of essence; resulting in poor decisions being made.

Agency Member Carr noted that the City studied the land value for this block for almost a year when the library location was discussed. The Council/Agency Board has talked about the downtown and improvements to the downtown for most of his tenure on the Council/Agency Board. He did not believe that this is a short decision or a decision being made based upon time pressures; noting that these are properties and values discussed by the City for some time. He expressed concern with delaying development in the downtown further. He did not believe that he was missing any information and is willing to move forward this evening.

Vice-chairman Tate inquired how he could withdraw his acceptance of an amendment to the motion.

Interim Agency Counsel Siegel indicated that as the amended motion has been seconded, Vice-chairman Tate would need the concurrence from Agency Member Grzan to withdraw the amended motion on the floor.

Action: *Agency Member Carr made a motion, seconded by Agency Member Sellers, to accept staff recommended action as a substitute motion. The motion carried 3-2 with Chairman Kennedy and Agency Member Grzan voting no.*

Action: *Agency Member Carr made a motion, seconded by Agency Member Sellers, to approve staff recommended action: **Authorizing** the Executive Director to Execute, Including Making Modifications as needed and Subject to Agency Counsel Review and Approval, an Option Agreement for the Sale of 55 East Fourth Street to Glenrock Builders, or Its Designee in the Amount of \$303,481 Plus Customary Escrow/Closing Costs. The motion carried 3-2 with Chairman Kennedy and Agency Member Grzan voting no.*

City Council Action

CONSENT CALENDAR:

Mayor Pro Tempore Tate requested that agenda items 6 and 8 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 5, 7 and 9-14 as follows:*

5. **PRELIMINARY JUNE 2005 CITY FINANCE AND INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

7. **ANNEXATION APPLICATION, ANX-01-04: CLAYTON-MERLANO**

Action: **Adopted** Resolution No. 5933, Approving Annexation.

9. **SUBDIVISION IMPROVEMENT AGREEMENT WITH SANJAR AND SHARAREH CHAKAMIAN (APN 764-14-004)**

Action: 1) **Approved** Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

10. **REJECTION OF BIDS FOR THE BUTTERFIELD WELL PUMP STATION PROJECT**

Action: 1) **Rejected** the Bids Received on July 13, 2005 for the Construction of the Butterfield Well Pump Station; and 2) **Authorized** Staff to Re-Bid the Project.

11. **COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR PREPARATION OF A “TRAILS AND NATURAL RESOURCES STUDY”**

Action: 1) **Approved** Resolution No. 5934, Supporting TDA Article 3 Grant Funding for the Preparation of a “Trails and Natural Resources Study”; and 2) **Appropriated** Funds of \$4,000 from the City Budget’s Current Year Un-Appropriated Street Fund Balance.

12. **COMMUNITY CHOICE AGGREGATION UPDATE**

Action: 1) **Accepted** the Update Report from the Utilities and Environment Sub-Committee; and 2) **Directed** the City Manager to Solicit Potential Aggregation Partners from other Cities in Santa Clara County.

13. **ACCEPTANCE OF PARADISE PARK PLAY EQUIPMENT REPLACEMENT PROJECT**

Action: 1) **Accepted** as Complete the Paradise Park Play Equipment Project in the Final Amount of \$79,990; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder’s Office.

14. **CITY COUNCIL POLICY REGARDING LAND USE NEAR STREAMS AND WATERWAYS**

Action: **Approved** the Proposed City Council Policy.

6. **VOTING DELEGATE TO THE 2005 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**

Mayor Pro Tempore Tate indicated that he would not be able to attend the League of California Cities business meeting. Therefore, he cannot serve as the alternate voting delegate.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council unanimously (5-0): 1) **Approved** Appointment of Mayor Kennedy as the City's Voting Delegate and Council Member Grzan as the Alternate Voting Delegate to the League of California Cities' Annual Conference; and 2) **Directed** the City Clerk to Complete the Voting Delegate Form and **Forward** Said Form to the League of California Cities.*

Council Member Carr inquired whether Mayor Kennedy would be bringing back any issues to be voted upon by the delegates for the Council to discuss.

Mayor Kennedy requested that the resolutions to be voted upon by the delegates at the League of California Cities annual conference be brought back to the Council for timely review.

8. CAPITAL IMPROVEMENT PROGRAM (CIP) FUNDING FOR REGIONAL SOCCER COMPLEX

Mayor Pro Tempore Tate noted that these types of action items come before the Council as part of the agenda that it will be making a decision on, receiving a recommendation from a commission. He noted that this item is being brought before the Council independently on a recommendation made by the Parks and Recreation Commission on consent calendar. He clarified that the Council is receiving the recommendation and not accepting the recommendation.

Council Member Carr said that placing a recommendation from the Parks & Recreation Commission on consent calendar is different from standard procedures. He indicated that he attended the Parks & Recreation Commission meeting where they took it upon themselves to agendize the discussion and recommendation on the use of the soccer complex dollars. He stated that the Community & Economic Development Committee is taking a look at all Redevelopment Agency (RDA) funds, including the soccer complex dollars. The Committee will be returning with recommendations for all of the dollars. He noted that the recommended action is merely acknowledging the Parks & Recreation Commission's recommendation for the use of these dollars. He indicated that the Committee will be considering the Parks & Recreation Commission's recommendation as it looks at the RDA dollars.

Mayor Pro Tempore Tate stated that a committee he serves on will also be looking at all RDA funds.

Mayor Kennedy clarified that the Council is not approving nor adopting the re-allocation of funds, but merely receiving the report from the Parks & Recreation Commission.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Received** Recommendation from the Parks & Recreation Commission that CIP Funds Designated for Assisting Construction of a Regional Soccer*

Complex at Sobrato High School be Reallocated to the Outdoor Sports Complex Project.

City Council Action (Continued)

CONSENT CALENDAR:

Council Member Sellers requested that item 15 be removed from the Consent Calendar. He indicated that he would be stepping down from discussion of this item 15 due to a conflict of interest. He excused himself from the Council Chambers.

15. AWARD CONTRACT FOR CONSTRUCTION OF PEDESTRIAN CROSSING IMPROVEMENTS AT MONTEREY ROAD AND CENTRAL AVENUE

City Manager Tewes indicated that the Council has been presented a report on the Dias from the Public Works Director recommending that the bid be rejected and that staff be authorized to rebid the project. He informed the Council that the bid for street improvements, in conjunction with Britton Middle School, came in extremely high. Staff was advised by the proposed bidders that the bid came in high as they are very busy and that should the City wait to rebid the project, the City may receive lower bids.

Council Member Carr inquired as to the timing of this project; noting that it was initially hoped to complete the project before the start of the school year. However, complications with Caltrans did not allow this.

Director of Public Works Ashcraft said that it is staff's hope to reopen the bid within four weeks. Staff will return to the Council in six weeks with a reasonable bid and recommend award. He said that it is possible that part of the work could be delayed until the school winter break; depending on the weather. It is still staff's hope to complete the project before the first of the year; subject to the bidding climate.

Council Member Carr indicated that the City-School Liaison Committee will not be meeting for a while. He requested that staff notify the School District about the delay.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent: 1) **Rejected** the bid received on July 26, 2005 for the construction of the Pedestrian Crossing Improvements project; and 2) **Authorized** Staff to Re-bid the Project (per the supplemental staff report).*

Council Member Sellers resumed his seat on the Dias.

City Council Action

PUBLIC HEARINGS:

16. DEVELOPMENT AGREEMENT, DA-04-09/ ZONING AMENDMENT, ZA-04-21: E. DUNNE-DELCO – Ordinance Nos. 1732 and 1733, New Series

Planning Manager Rowe presented the staff report on a request to approve a mitigated negative declaration, amend the current R-2 zoning to establish a residential planned development overlay and a precise development plan for a 78-unit housing project (first phase - 34 units), and a development agreement on a 10.6 acre site fronting the southwest corner of East Dunne and San Benancio Way. He indicated that the Planning Commission recommends Council approval of the applications with a recommendation that the road widths be increased from 36 feet to 40 feet, curb to curb (standard requirement for streets that are not limited solely to local traffic).

Council Member Carr stated that he understands that there is a potential for through traffic and inquired whether the City was encouraging through traffic by the design of the project.

Planning Manager Rowe noted that the project is designed with 90 degree turns and would minimize the potential of encouraging through traffic to utilize the streets within the subdivision.

Mayor Kennedy noted that the City's traffic calming study and other traffic studies state that in order to slow traffic down, you need to narrow the streets. He expressed concern that through traffic would be increased with a wider road width. He stated that he did not agree with the Planning Commission and staff's recommendation.

Planning Manager Rowe indicated that the Planning Commission accepted Public Works' recommendation. He said that staff's recommendation is consistent with the City's adopted local street standards.

Council Member Grzan indicated that citizens ride bicycles on city streets. If the streets are designed to be narrow, it would present additional risks to bicyclist. He stated that he would like to incorporate pedestrian safety in residential areas, especially for bicyclist. He stated his support of the wider street widths.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1732, New Series (Zoning Amendment).*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1732, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN R-2/RPD ZONING AMENDMENT TO ESTABLISH A RESIDENTIAL PLANNED DEVELOPMENT OVERLAY ON A 10.44 ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF EAST DUNNE AVENUE AND***

SAN BENANCIO WAY. (APNs 817-11-067 & 817-11-072), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1733, New Series (Development Agreement).*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1733, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-09 FOR APPLICATION MP-02-06: EAST DUNNE - DEMPSEY & MP-04-12: EAST DUNNE - DELCO (APNs 817-11-067 & 817-11-072), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

17. ASSESSMENT OF HAZARDOUS VEGETATION MANAGEMENT PROGRAM CHARGES – Resolution No. 5935

Assistant to the City Manager Dile presented the staff report, indicating that this evening; the Council would be concluding the 2005 Hazardous Vegetation program by hearing comments from the public and establishing the final report for the program. The Report will be sent to the County Assessor's for charges to be made to properties that had abatement work performed this past year. She informed the Council that Debbie Craver, Program Coordinator, Santa Clara County Fire Department, was in attendance to answer any questions the Council may have.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5935, Ordering the Final Report on the 2005 Hazardous Vegetation Program be transmitted to the County Assessor's Office and that Liens be posted against the Properties on the Report.*

18. ZONING TEXT AMENDMENT, ZA-05-06: CITY OF MORGAN HILL-MG GENERAL INDUSTRIAL DISTRICT AMENDMENT

Planning Manager Rowe recommended that the Council open the public hearing and then table the request to amend the zoning district to allow concrete batch plants as permitted uses in the General Industrial (MG) zoning districts. He indicated that the Planning Commission believes that it would be a better approach to zone the site as a planned unit development (PUD) versus a blanket amendment to the MG zoning district. He informed the Council that staff would return with a zoning amendment to establish a PUD on the site being pursued by Associated Concrete that would allow a concrete batch plant as a permitted use in September 2005.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by a Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this item.*

19. APPLICATION ZA-04-14, AMENDMENT OF PARKING ORDINANCE TO IMPLEMENT DOWNTOWN PLAN – *Ordinance No. 1734, New Series*

Director of Community Development Molloy Previsich indicated that the Downtown Plan calls for changing parking requirements in order to stimulate development in the downtown. For commercial development, parking is to be provided in common rather than parcel by parcel or site by site. She stated that it is being recommended that the on site parking requirements be eliminated for commercial uses and the elimination of the guest parking requirement for residential uses. She informed the Council that the Planning Commission reviewed a draft of a downtown parking management plan on June 28, 2005. At that meeting, it was revealed that parking could be at 85% occupancy in the downtown by 2007 and 100% occupancy by 2008, in a worst case scenario. The consultant, staff and the Planning Commission believe that the realistic projected scenario would be somewhere between the worst case and the best case scenario. She stated that more work needs to be done to the plan to identify the realistic assumptions and to figure out the actual loss of on street parking due to Third and Depot Street improvements. The City would need to come up with strategic measures for ensuring that long term parking supplies are met. She indicated that the consultant, staff and the Planning Commission are comfortable forwarding an ordinance to the Council that would provide for commercial and residential guest parking exemptions for a two-year period as the downtown has an excess parking supply and room to have development occur within the exemptions.

Ms. Molloy Previsich indicated that the Council needs to identify the boundaries of where the exemptions are to occur as part of the ordinance. She stated that the Council's Community & Economic Development (CED) subcommittee believes that the boundary should be the entire Downtown RCDS boundary; broadening the boundary from the recommendation of the Planning Commission. Expansion of the boundary would include all opportunity sites in the downtown core and adjacent to the downtown core identified in the Downtown Area Plan. She stated that the Council will need to identify the extent of the boundary area. The Council also needs to determine whether or not the ordinance should require payment of in lieu fees for any parking spaces not provided. She indicated that the consultant, staff and the Planning Commission recommend that parking in lieu fees be paid while the Council's CED subcommittee believes that requiring the payment of parking in lieu fees could be an obstacle and/or a disincentive for downtown development, and is recommending that the fees not be charged as a provision of this ordinance.

Mayor Kennedy felt that the two blocks located on the south side of Dunne Avenue, east of Monterey Road and across from the Community Center, would be a logical part of the downtown as they are located close to the courthouse.

Mayor Kennedy opened the public hearing.

Chris Bryant expressed concern about revising and eliminating on site parking without a dedicated space set aside for parking in the downtown (e.g., parking garage). He expressed concern that the City would end up with a developed downtown with parking located at the outskirts of the downtown that is not convenient for individuals to walk into the downtown area.

Mayor Kennedy inquired whether Mr. Bryant was supportive of vertical mixed use; more housing and commercial uses in the downtown area. He felt that requiring parking spaces would act as a deterrent to this goal.

Mr. Bryant said that should the City allow a lot of development to take place in the downtown with no parking, it would be a deterrent to the health of the downtown. It was his understanding that proposed development would be constructed on top of existing parking that is relied upon by many visitors to the downtown. While he agrees that it would be better and more efficient to centralize parking, he would like to see development done in the right order. He felt that you need to identify and plan for parking.

No further comments being offered, the public hearing was closed.

Council Member Sellers said that the Council's CED subcommittee reviewed the proposed amendment, making sure that it used the parking study. He said that the Downtown Plan specifically lays out a long term plan for parking and designates some general areas where parking could occur. The areas identified are contiguous along Depot Street, adjacent to the train depot. Once the areas in between Depot Street and Monterey Road start to build out, he felt that parking opportunities will avail themselves. He noted that the Community Center's long term plan identifies additional parking for expansion. Therefore, parking sites have been identified, long term. He indicated that with commercial and residential mixed use, you will find that the same parking spaces get different uses, depending on the time of day. Having reviewed all the information and having an extensive discussion with the Downtown Association over the last month, the CED subcommittee feels comfortable and believes that it is appropriate to make the expansion. He stated that the Downtown Association had some concerns. He noted that the ordinance will have a second reading next week and that the Downtown Association will have the ability to weigh in on the ordinance should an error be found. He was pleased to see that the ordinance is moving forward and supported suspending the requirement for payment of in lieu fees, temporarily. It was his belief that the City needs to send a positive message to the downtown.

Mayor Pro Tempore Tate stated that should the City not collect in lieu fees, it will not have funding to build a parking structure. He did not know how providing an incentive at this time would enable the construction of a parking structure to occur at a later date.

Council Member Sellers supported a temporary suspension of requiring the payment of in lieu fees in order to encourage downtown development. He noted that development would be in partnership and in line with the other actions taken by the City. He stated that the Council can take a look at the situation at a later date.

Ms. Molloy Previsich clarified that the parking in lieu fees equate to \$5,271 per parking space not provided. The amount of in lieu fees not collected would depend on the types of projects that would be

constructed in the two year time frame. She reiterated that the City's consultant, staff and the Planning Commission recommend that in lieu parking fees be imposed in order to be able to create/improve parking in the future. However, there could be an argument that requiring in lieu fees may be a disincentive to development in the downtown.

Council Member Carr said that in lieu fees for commercial development works out to be \$20 per square foot in additional fees, and would not be sufficient to develop a parking space. By the time the City is able to collect in lieu fees, with inflation, the City will have lost a couple of parking spaces. He said that it is important to keep in mind that the CED subcommittee's recommendation to waive in lieu fees for commercial and guest parking for residential development in the downtown would be for a two-year limited basis. He noted that in the worst case scenario, as identified in the parking study, it was stated that the City has adequate occupancy through 2008. Therefore, the CED subcommittee recommends waiving the requirement under this timeline as a way to commence development in the downtown. He did not believe that in lieu fees provide enough dollars, space per space, to meet the requirements. He recommended that the Council talk about how the City can be a partner. The City needs to make sure that it takes the steps needed with adequate dollars and moves forward with potential development; keeping it underneath what the parking study states is the worst case scenario.

Mayor Kennedy expressed concern with the recommendation to waive in lieu parking fees. He felt the City would be taking a short sighted approach if it does not provide the parking that will be needed. However, he is in general agreement with the recommendation to waive the in lieu fees as long as it has a two year window period. He felt that developers would recover their costs through profits or the cost of the units.

Mayor Pro Tempore Tate complimented the Planning Commission for taking an analytical approach to this issue, noting that they are not done with their work. He felt that the Planning Commission would continue to find the right parking management plan to address future needs. On the recommendation of the CED subcommittee, he stated his support of incorporating the entire area and opportunity sites. He stated that he shares the concern about waiving the in lieu fees and did not believe that the City's in lieu fees were high enough. He agreed that the City needs to find incentives for development in the downtown. He stated that he may be willing to support collecting partial in lieu fees.

Mayor Kennedy felt that there were two questions that need to be answered. He inquired whether there was general consensus to support exhibit D.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) supported exhibit D, the expanded opportunity sites.*

Council Member Grzan stated that he does not have a sense of the total cost of in lieu fees that could be generated. He inquired whether in lieu fees were collected in prior development in the downtown area.

Ms. Molloy Previsich said that it was her understanding that in lieu fees have not been collected in the downtown area as there are provisions in the ordinance that state that if a project is located adjacent to a parking lot, development can attain an exemption. She clarified that in lieu parking fees can be used to

provide parking, add lighting, improve pavement, purchase public lots, and develop public parking areas. Any funds collected would help to implement some of the parking management strategies in addition to increasing the supply of parking to meet the demand of the downtown.

Council Member Grzan said that if in lieu fees are collected, there would be an expectation that the funds would be used to alleviate parking. However, it has been indicated that in lieu fees to be collected would not be sufficient to alleviate parking needs.

Mayor Kennedy noted that staff has given the Council two alternatives and that the ordinance would reflect the Council's decision. He noted that the CED subcommittee is recommending that the in lieu fees be waived for two years and remove a possible disincentive to downtown development.

Ms. Molloy Previsich stated that based on potential development in the downtown, approximately \$1.8 million in revenues could be generated over the life of the Downtown Plan for the commercial component. Approximately \$220,000 could be generated for guest parking associated with 135 residential units (approximately \$2 million collected in parking in lieu fees with 90,000 square feet of non residential and 135 residential dwelling units).

Council Member Grzan inquired who would be paying for parking structure(s) in the downtown should the City not collect in lieu fees.

Ms. Molloy Previsich stated that the Parking Management Plan recommends exploring funding mechanisms that might include a parking assessment district. She said that Redevelopment Agency funding could be used to provide public parking if the area is extended, and/or parking meter revenue.

Council Member Sellers noted that the City did not collect in lieu fees for 10 years because commercial development has not occurred in the downtown. He felt that the City continues to create disincentives for development in the downtown. He noted that land costs in the downtown are high. He stated that Morgan Hill does not have a successful downtown because there is not enough development to create a successful downtown. He did not believe the City would build out 90,000 square feet in commercial development in 24-months. Therefore, the City is looking at a fraction of the amount that would be built overall. If the City creates an atmosphere where individuals want to build in the downtown, the City can incorporate parking in lieu fees at the appropriate time.

Mayor Kennedy noted that it has been mentioned that Redevelopment Agency funds can be used to pay the in lieu fees. He stated that he would like to see the use of Redevelopment Agency funds to pay the in lieu fees versus waiving these fees. He stated that he does not support waiving in lieu fees.

Mayor Pro Tempore Tate indicated that the proposed ordinance would sunset in March 2007. He noted that Council Member Sellers recommends the Council take action in order to spur development in the downtown. He stated that he shares Mayor Kennedy's concern, but that he supports the CED subcommittee's recommendation to waive in lieu fees for a two year period.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **agreed** not to require in lieu traffic fees in the downtown area until March 2007.*

Mayor Kennedy stated that he supported the motion, in general, as he supports the downtown.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1734, New Series, Amending Municipal Code Chapter 18.50.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1734, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE MORGAN HILL MUNICIPAL CODE, CHAPTER 18.50 OFF-STREET PARKING AND PAVING STANDARDS, TO ESTABLISH EXEMPTIONS FOR DOWNTOWN DEVELOPMENT PROJECTS**, waiving in lieu fees until March 2007 and incorporating Exhibit D, by the following roll call vote: **AYES:** Carr, Grzan, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

City Council Action

OTHER BUSINESS:

20. OUTDOOR SPORTS COMPLEX

Special Assistant to the City Manager Spier presented the comprehensive report on the outdoor sports complex via a power point presentation. She addressed the Parks & Recreation Commission's perspectives on the Operation and Maintenance Agreement, ground lease, and shared parking. She informed the Council that the Parks & Recreation Commission recommends that the Council: 1) approve the deal points as outlined this evening; 2) consider naming the sports complex the "Morgan Hill Community Sports Park"; 3) approve the public-private Phase 1A conceptual site plan and master plan; and 4) fund additional site layouts for the private building. She indicated that the following are staff's recommendations to the Council: 1) adopt deal points; 2) ask non-profits to resolve issues and accept deal points; 3) ask the Coliseum Recreation Group (CRG) to accept deal points, and if they do, submit necessary supporting documentation; 4) if CRG cannot proceed because of disagreement, or "the window" has closed, 5) Council to consider whether to issue a new RFP, with revised site plan, or 6) Council direct the Parks & Recreation Commission to reconsider original program with possible different numbers and mix of fields in order to maximize revenue potential for non-profit operation.

Council Member Grzan indicated that when the Council entertained the possibility of having a private commercial entity be a part of this project, it was to somehow gain revenue from this venture to offset costs. If the youth groups are willing to undertake the operation and maintenance of the complex, he inquired as to the need for a commercial venture.

Ms. Spier informed the Council that the youth groups would only be able to take on the operation and maintenance costs with the assistance of lease payments. Should the City build the sports complex without a commercial entity, they would not be able to maintain the complex. She informed the Council that two youth groups are in attendance to respond to questions the Council may have.

City Manager Tewes noted that pages 14 and 15 of the bound document outline a recommended implementation strategy.

Mayor Kennedy opened the floor to public comment.

Doug Payne, representing the Coliseum Recreation Group (CRB), stated that since the May 2005 meeting, it was noted that there was an alignment across the City Council regarding the next steps. He said that City staff, the Parks & Recreation Commission (PRC) and the CRG worked diligently over the last 60 days to accomplish a number of objectives and activities. He stated that the operations and maintenance has been accomplished and that CRG is satisfied with the work and analysis that has been done. He understands that the target for the operation and maintenance (O&M) is approximately \$150,000 per year. He said that the 100% cost recovery over a three-year period is a graduated approach to the business plan and that it has been incorporated. He confirmed that the youth groups are of priority within CRG's venue and that it is consistent with all the activities of the PRC. He stated his support of this objective. He has reviewed a dual project tracking and that this has been documented by staff. He stated that CRB has agreed to flexibility, assuming the entire lease, however, it was not the goal and the intent of the original RFP. Regarding cost recovery via other means, he said that foot traffic, transient occupancy tax (TOT) revenue, and economic development have been a part of the analysis and criteria for moving forward with the ERN.

Mr. Payne addressed the indoor recreation center and the CRG alignment. He stated that this remains open from staff's perspective. He said that CRG believes that it has completed the necessary work. CRG has put together a pricing analysis, product services, hours of operation, and market demographics. He addressed the deal points. He stated that CRG will respect the timeline put together and would respond accordingly. Regarding the term length, he stated that CRG is satisfied with the term length. He felt that a good solid analysis has been prepared by both sides, including the architect and city planning. He was pleased to see the City is looking to set aside a dedicated parcel. He agreed to answer questions regarding CRG's financial background and capability from a development and investment stand point. He informed the Council that the youth groups are in discussions regarding the outdoor operations and maintenance and that he does not see this to be insurmountable.

Mr. Payne addressed the operations plan. He said that there has been discussion about a public oversight into a private operation. To the extent that a public entity has oversight into a private entity's day to day operations or operation of the business is a concern to CRG. CRG sees a sublease approval as marginal, at the outset. Regarding the indoor recreation center and pricing, he stated that CRG has shared numerous documents that identify pricing of the services, products, programming schedules, services to be offered, marketing and demographics. It was his belief that concerns still linger, but that it is not clear what the specific issues are and that he needs to understand them. He stated that concerns have been raised with respect to the outdoor sports complex access and CRG's request for 10 weekends a year. He

indicated that it is planned to draw and attract businesses and traffic to Morgan Hill in order to raise visibility. He stated that youth groups would be able to participate in any events hosted by CRG. He has evaluated the site improvements and that it is CRG's goal to assume any and all control within the private sector. He said that CRG plans to invest \$15 million toward a building and that at term, the Redevelopment Agency would assume the improvements. He stated that there is a gap between the fees and assessment, from an economic standpoint.

Mr. Payne addressed the analysis of a local fitness club market; stating that 60% of the fitness memberships are held outside Morgan Hill. It is felt that local expansion of the market will result in retaining 40% of the membership in the indoor recreation center that are currently not in the area. The indoor recreation center having 50% market share, and coliseum being a regional draw with 70% of its members located outside of the area, CRG sees collaboration. He stated that CRG is supportive and interested in a combined indoor and outdoor aquatics destination on Condit Road.

Mr. Payne said that CRG is seeking a regional sport destination versus a community focus. He stated that the future of the regional soccer complex is uncertain. He noted that the CYSA organization will vacate the site by 2006, depending on the length of the lease extension and construction timeline. He stated that the TOT loss income purported from the loss of the CYSA, and the lack of growth from a regional complex would be \$¼ million per year, depending on tournament assumptions and the occupancy validated by the hotel community. He understands the challenges associated with the aquatics center in terms of the fiscal impacts. He noted that the aquatics center is focusing on the community and that it is questionable whether the community can continue to support it without a regional position and the revenue that is associated with this. He said that there is a potential for a TOT recovery with an outdoor sports complex. CRG views this as an economic development partnership opportunity.

Mr. Payne provided a summary of information to staff and the Council and recommended that the information be reviewed. He said that the packet includes information for an international economic development committee presentation put together by the City of Fisco, Texas relating to recreation and sports venues and what it means to a community.

Mr. Payne stated that the three deal structures are on the positive side. He felt that City staff made significant efforts to analyze the deals and work together. CRG is comfortable and appreciative of the architect's inclusionary work and the parking analysis efforts that have been completed. He stated that CRG has concerns in terms of the sports groups. He said that it is not known which groups would participate or how they are to be aligned over time. Regarding the priority of the complex being a community sports park versus a regional draw to drive economic development, he agreed that there needs to be community youth access. He stated that CRG has provided ways for youth access from a financial perspective. It is known that the community's youth are able to support the investment of some of the venues. He noted that the City is not able to contribute to this joint venture, at the onset. He stated that CRG is not willing to commit to all financial risks in development at this point because the deal points have been set up as a single, one way deal. He stated that CRG has continued to be active in the community, consistent with their vision over the last 1.5 years, to develop a sports destination for Morgan Hill. He said that CRG is not aligned with a public-private partnership. If development fees and assessments can be offset, versus the current regional sports TOT, there is an opportunity to look at

creativity around the development fees, assessments and costs. He noted that these are items that the private sector has no control over from a development stand point. He felt that the perspective of community versus regional may influence and/or contribute to some of the decisions to be made on this item. He stated that he has reached out to the Sports Management Group. It is not known whether the indoor recreation center will be able to support the demand that it will create. He informed the Council that the Sports Management Group's cursory feedback was that the two facilities would be complimentary. He recommended that the City leverage a third party who could review the operations and programming of the indoor recreation center in order to get the alignment of the two venues. The Council could then proceed based on the results.

Bob Morris, president of Morgan Hill Pony Baseball and one of the principals of the Morgan Hill Youth Sports League, informed the Council that Morgan Hill Pony Baseball is committed to the sports complex in either form: a public-private or strictly public concept. He said that a youth sports subcommittee reviewed a youth sports park. The subcommittee put together a configuration that would accommodate the youth sports group; including the cost to put together a youth sports complex. He said that Morgan Hill Pony Baseball is looking to vacate some of the school fields and using the sports complex fields. In return, Pony Baseball would help manage the complex. As time went on, funding issues were reviewed. He informed the Council that the subcommittee has not finished its analysis on managing the fields without private funding. If you incorporate non youth programming to generate revenue, the park would need to be reconfigured to add more fields; possibly bringing in adult leagues to help offset the operating fees. He stated that the youth sports leagues; consisting of Pop Warner Football, Morgan Hill Pony Baseball, soccer and volleyball, have formed a league to compete for management of the sports complex. He stated that these four entities are the founding members and that these four sports organizations are the majority of the sports league in the City that have experience in scheduling and maintaining fields.

In response to Council Member Grzan's question, Mr. Morris stated that a consolidated youth group would be willing to undertake the maintenance and operations of the fields, pending the investigation of potential revenue generation. If there is thought given to the configuration of adding one or more full sized fields and multiple fields for youth, you can hold large tournaments. He has spoken to several travel teams, both in town and out of town, who have indicated that they would be willing to pay for the use of the facility.

Council Member Grzan noted that the City of Gilroy is proposing to build a 40-acre outdoor project. He inquired whether Morgan Hill would be able to compete with such a structure.

Mr. Morris stated that it was his belief that Gilroy's complex would be geared toward softball and little league baseball. It was also his belief that the complex would attract more from the competitive area versus the youth area. He indicated that an analysis could be completed by October 2005 to be comfortable in approaching the City as being the sole entity and providing the maintenance and operation of the facility. He stated that a non profit organization has not been formed, but that the four organizations intend to submit an application for a 501c, non profit status.

Debbie Cupp spoke in support of the Coliseum Recreation Group. She noted that in 2001, the YMCA paid for a study to look at what would need to go into the indoor recreation center and the fees to be charged to citizens of Morgan Hill that would make the center viable. The study found that the indoor recreation center would need Morgan Hill residents as well as San Martin and Gilroy residents to make it a financial viable venture. One concern that she has with the CRG proposal is that they could draw from some of the users of the indoor recreation center. She recommended that an outside vendor be looked at such as Balducci and Associates or Sierra Analytics to assess whether or not CRG would cannibalize some of the users from the indoor recreation center. She recommended that this be studied in order to ensure that the indoor recreation center is full cost recovery.

Craig van Keulen requested that the Council consider an additional allocation of \$3,500 to explore reorientation of the site plan for the Coliseum Recreation Group to orient their 110,000 square foot building on an east to west orientation instead of a north to south orientation. Also, to determine whether or not this orientation would be more aesthetically pleasing and would not block the view of the entire baseball area.

Jeff Bernardini, chairman of the Parks and Recreation Commission (PRC), stated that the PRC is in consensus that it would like the sports complex to move forward with or without a public-private partnership. He said that the project is important to the PRC and recommended that it move forward as quickly as possible. He said that at the last PRC meeting; only four members were in attendance and that an issue was raised regarding the field design. He indicated that the Council addressed all deal points and that the PRC has been asked to be more involved in the decision making process. He noted that the Council has received the PRC's feedback via the matrices found in the Council packet. He said that there was a conflict question raised at the PRC meeting about his interest. He stated that he serves on the Morgan Hill Youth Sports Alliance as a board of director. He did not believe that he had a financial or legal issue in his participation on this matter. With respect to the common law issue, he felt that he has and will continue to remain unbiased. He indicated that he has asked the Interim City Attorney to look into this issue and provide an official ruling. He did not believe that he has a conflict and that once he is advised he has a conflict, he would step down. His concern with the community has been well proven and that he does not believe that he has been biased in any way.

David Dworkin addressed the loss of \$220,000 - \$250,000 in TOT. He said that the City will lose \$120,000 in TOT within the first four months without the CYSA soccer complex. He did not know how communities can sustain multi sports complex and recuperate financial losses. He noted that two hotels have changed hands and that another hotel to the north is for sale. Another hotel has indicated that they would close their doors without CYSA. He stated that four hotels have been added and that you see hotel rates range from \$99 to \$85 based on supply and demand. He noted that the Almaden area is building a multi sports complex as is the City of Gilroy. He stated that he supports the idea of a multi sports complex, but he hopes that it can be designed to replace the tax loss to be seen. He stated that it will take time to build and create a market. With the hotel economy, he did not know whether hotels can take another hit. He stated that hotels need to draw from major tournaments. As a hotel manager, he supports the idea of a sports complex; as a resident, he likes the multi sports complex, but not at the cost of essential city services such as police services.

City Manager Tewes noted that there is a question on the economic impacts associated with the loss of the soccer complex and that of a private-public partnership for a proposed outdoor sports complex. He said that staff has heard many different perspectives. This evening, he has heard the highest range of impacts. He informed the Council that staff has asked the Chamber of Commerce's Tourism Committee to provide the City with data. He noted that the analysis is not included in the packet as staff received the information late last week and did not have the opportunity to review the information. Staff now has data from all hotels except one located along the Condit corridor. Staff will be contacting this hotel directly. Once the information is received, staff can overlay the information with other pieces of data from the CYSA over the past two years that indicate which weekends they had the highest use and which weekends they did not. This information will assist in determining economic impacts.

Daniel Ehrler indicated that the Board of Directors of the Chamber of Commerce has not taken an official position on what is before the Council. He said that this item has been discussed by the Chamber of Commerce's Economic Development Committee. There have also been discussions on attraction and retention. Based on statements made by Mr. Dworkin and the City Manager, in terms of the economic impacts on decisions being made, he felt that the economic impacts are relatively significant. He felt that numbers need to be obtained. He suggested the Council await economic information as part of its discussion and consideration. He said that there is no doubt that the decisions relatively to this land, based on its importance and significance to the City, and the community at large, as well as economic impacts and its contributions to the City's revenues/services, should be included in the mix of discussions. He felt that this is an element of discussion that would be significant and important to include.

No further comments were offered.

Ms. Spier requested that the Council provide staff direction regarding the deal points and direction on the interim lease extension with the CYSA organization. She noted that CRG has indicated that they would look at an overall lease arrangement. However, staff is recommending that 2.5 acres be carved out for CRG and that the remainder be used by sports group. She said that staff is willing to work with the two groups to see if they can reach agreement by October 2005. Staff would return to the Council with an overall master plan at that time.

Mayor Kennedy noted that Mr. Ehrler suggested that a Council decision be delayed. He inquired whether the Council could concurrently study the economic issues and have a bail out option should there not be an agreement.

City Manager Tewes clarified that the Council can consider the recommendations of the PRC and the sports groups this evening. He stated that individuals who are asking the Council take into account the economic impacts are also asking the Council to revise and extend its goals. He noted that the goal for the project did not talk about the issues raised by the proponents of one proposal or another. He felt that staff can come up with a reasonable/acceptable analysis of the impacts associated with the soccer complex. Staff does not believe that there is sufficient information from CRG to evaluate their business plan much less the economic impacts of their proposal. He felt that it would be inappropriate to ask CRG to provide a lot of information along these lines until they know whether or not the deal points

being recommended are acceptable to the Council. He noted that their deal points are significantly at variance from what they proposed in March and what they commented upon this evening. He noted significant economic impacts to the City's budget. The deal points suggest that the private development costs be borne by the private developer. Their proposal is at variance with this and that this is an area that staff needs guidance from the Council. Until CRG knows whether it is a deal worth pursuing, he was not sure if it was fair to ask them to provide the City with a detailed analysis of their sources, uses, funds, and/or operating plans so that staff can properly evaluate their impacts. He stated that it is clear that there would also be economic impacts from private development. There would be economic impacts associated with development on private property or from any private investment in the community. He indicated that CRG is requesting the Council revise its goals for the outdoors sports complex.

Council Member Grzan noted that the project for an outdoor recreation complex is primarily to serve the youths of Morgan Hill, and thus, the intent for putting money into this facility. He hears this evening encouragement from youth groups that they are willing to undertake and look at being the sole source for the management and operation of this complex. He stated that he would like the Council to give the youth groups time to explore these possibilities, realistically looking at the costs and what the commitment would be. He felt that the best decision the City could make is serving the youth of Morgan Hill and having the coordination made by the youth organizations. He stated that he was inclined to pursue this direction as opposed to proceeding further with a commercial venture and the complexities associated with a private venture. This would give the City's youth the greatest opportunity to participate on local fields.

Mayor Pro Tempore Tate noted that Mr. Payne identified the gap as being the City's willingness to contribute dollars to a joint venture. He understood Mr. Payne has a justification based on economic return for making this investment. He said that the economic return the City is receiving from the soccer fields at this time is being spent as part of the general fund. He noted that the Council established a \$2.5 million budget for the outdoor sports complex. He acknowledged that the City is not able to contribute funding above and beyond the \$2.5 million already earmarked for this project. He recommended that the Council stick to its budget for this project. He does not know if there is any way, without the private rental, to get the private sports groups to maintain the facility. He said that the fundamental gap with the CRG proposal seems to be the additional money they want the City to assist with in terms of fees, etc., the City does not have. He stated that he would support shifting the funds earmarked for the regional soccer complex toward the library.

Council Member Carr said that he attended a couple of the PRC meetings when they discussed this issue. He applauded the PRC for their work and extensive review of this issue. He stated his support of the extension for the CYSA interim lease to provide additional revenue while the City continues to work out these issues. He stated that the Council needs to keep in mind that there is more than one sports group that wants to operate the sports complex. He felt the Council needs to give specific direction to the leaders of these organizations about its expectations from these groups as well as its expectations of the facility and meeting the needs of the entire community. He noted that staff is recommending that the Council direct these organizations to work out some of the differences; returning to the Council in October 2005. It is his hope that the Council would resolve the issues so that it does not end up with a similar situation being experienced with the aquatics center by competing organizations for the use of

the same space. The Council needs to address its expectations of the use of the sports complex fields. He agreed that the City purchased the property with the idea that Morgan Hill's youth would have the opportunity to use these fields. It has been a goal of the Council that the outdoor sports complex is designed for organized sports use, but that it is not exclusively to be used for organized sports. The outdoor sports complex needs to accommodate the organized leagues and the teams that exist today and also accommodate community needs. This is not to be a private organization that one joins in order to use the facility. It is a facility that needs to be opened to the community. He acknowledged that scheduling is an issue. He noted that everyone is willing to work out the scheduling issues. Once these issues are resolved, the Council can address the public-private partnership issue. He said that other sports groups have come before the PRC who were not involved in the 18-month long process and are expressing an interest in the facility. He said that some PRC members are interested in exploring whether there should be a multi purpose use of the fields versus a specific use of the fields. He felt the Council needs to provide direction to the PRC on this issue. He noted that the deal points presented are specific to a public-private partnership that will require dialogue. However, he felt some of the other issues can be resolved outside the dialogue needed for the deal points.

Council Member Sellers felt that the layout of the site needs to be discussed. He noted that the concession area is located separately, and felt that a better use of the site could have been designed. He stated his support of the PRC's suggestion that the site be revisited. He also stated his support of CYSA's extension and that it should be pursued. He supported going back to the Sports Management Group and ask that they give consideration to the models presented. Doing so would give the Council a sense of whether it is enlarging the pie or enlarging the number of individuals who are trying to consume the smaller pie. Further, there needs to be some consistency with existing groups. He noted that there are strong active organizations in the community and that they all realize the opportunity that exists. He recommended that the City take advantage of the organizations. He noted that when the Council originally looked at the site, it was being oriented toward youth. However, he felt that there is a significant gap in what the City can provide to the community. He felt the City has a unique opportunity to take advantage of items that are being offered such that the community cannot do on its own as it would not be financially feasible to do so. There is also an opportunity to develop both ends of the spectrum to provide recreational services to the entire community and to enhance the City's economic position. He said that economic development successes occur when you expand and take advantage of those things that are within the realm of possibilities. He felt the City has a unique opportunity to develop as a recreational hub for the entire region. The City needs to have a vision in order to take advantage of the opportunity, but not sacrificing other elements. He agreed that there is a unique opportunity to develop an outdoor sports facility that meets the needs of the youth in the community to a larger degree. He recommended that this be taken to the next step as the City has a unique opportunity to develop an indoor recreation center. The City can use this facility as a catalyst to do more in other parts of the community that would further enhance economic development and recreational opportunities. It was his belief that both can be accomplished and that it is not an either or situation. He felt that the fees is where the gap lies and that it would be short sighted if creativity is not used to resolve the fee issue. He stated that he would support moving forward with the points addressed this evening. He recommended that the City be more creative and innovative in moving forward, as solutions may exist. He acknowledged the City cannot pay for the fees, but that he would like to find a solution.

Ms. Spier said that the CYSA would be willing to negotiate improvements with an extension in a lease through December 2006. Staff recommends four recommended actions as part of the CYSA lease.

City Manager Tewes indicated that at a previous Council meeting, the Council expressed an interest and directed staff to contact CYSA to determine whether or not they were interested in extending the lease. He stated that he met with the CYSA executive director and that the executive director made it clear that they would prefer an extension through December 2006. If the City is willing to extend the lease through December 2006, CYSA would be willing to allow a diminished use of the fields during the construction period. He informed the City Council that the executive director understands that the soccer fields would be fewer as construction proceeds. CYSA would also like to make improvements to the area (e.g., parking improvements). Staff indicated that the parking lot needs to be repaired as part of phase I construction. Staff would like to explore whether there are aspects of the phase I outdoor sports complex that can be done on an accelerated basis that would meet the City's goals as well as that of the CYSA to allow for the longer extension. He noted that the Council previously indicated a willingness to extend the CYSA lease to later than July 2006.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **approved** staff recommended action regarding the CYSA interim lease.*

Council Member Carr noted that there has been some discussion about allocating some dollars to look at a possible realignment of the building.

Ms. Spier clarified that a study to look at the possibility of realignment of the building would be \$2,700. She noted that the CRG building alignment is fronting the Condit Road area and that the PRC recommends a Barrett Avenue alignment. She said that staff will also look at a San Pedro Avenue layout.

City Manager Tewes stated that the \$2,700 is a minimal investment to find out about additional options. He indicated that this is an option to be considered by the CRG. He indicated that CRG has informed the PRC and staff that their business model is best met when the buildings are aligned along the commercial road (Condit) versus the residential road (Barrett). He said that there would be planning issues as CRG would have to comply with compatibility issues with the residential neighbors located across the street. As a business matter, he was not sure as to the extent that CRG is still interested if the City insists on a different alignment.

Mr. Payne informed the Council that at the initial site layout and orientation meeting, it was indicated that there would be a potential to orient the building footprint in an east-west orientation. He understands that the baseball group has a preference to having the building change its orientation because of the blockage of the building to the outdoor baseball fields. He stated that the proximity of the main entrance adjacent to the parking lot would be the most efficient and cost effective way to locate the building, and would be attractive from an investment standpoint. He would agree to look at a reorientation and analysis of the impacts to the business and make a decision accordingly. He recommended that CRG and the City look at creating a synergistic solution together.

Council Member Sellers said that the distance to the concession buildings, parking lot and fields leaves a lot to be desired. He felt that there were gaps in the site layout and lack of usage in some key areas of the site. He recommended that these areas be revisited as well.

Ms. Spier stated that CYSA was able to stay on the site because the City was not going to make any improvements on that side of the property. She said that several concessions were made to come up with the phase I design. For \$2,700, the City would only be asking Mr. Steinmitz to move the building 90 degrees and determine the impacts to the rest of the site. She stated that the PRC applied some criteria; stating that they would only agree to shift the building if it did not impact the fields and necessitate additional costs. If Mr. Steinmitz was asked to look at where concession buildings are to be located, it would be at an additional fee.

Mayor Kennedy inquired whether it made sense to have the Sports Management Group take a look at the interaction between the indoor recreation center and the sports complex as the City is looking at different orientation(s) of the building.

Ms. Spier expressed concern that the issue of “compete” versus “non compete” has not been answered. She said that CRG requires flexibility in their business plan. She felt that it may make sense to have an outside consultant review both plans and see where there is synergism and where there is competition.

City Manager Tewes addressed the deal points and how they would address the question of competition. He noted that in the March proposal by CRG, they identified a particular market niche that they were seeking. To the extent that there was an overlap, it would be minimal. He indicated that staff is proposing to enter into a 30-year lease. Staff felt that it would be appropriate to make sure that the early prospects of non competition be built in as a contractual obligation matter through an “operations and management plan.” This plan would identify the contractual commitment by the private developer to operate the facility in a certain manner. He said that staff wanted to go beyond the initial representation that the two do not compete and convert this into a contractual obligation during the course of the lease.

Council Member Grzan stated that he is at the opposite end of where the Council is heading. He sees the community sports groups indicating a desire to make an attempt to manage the operations and costs of the sports complex facility. He recalls that the Parks and Recreation Master Plan states that the City needs to build for the community first. It also contained discouraging language about developing regional facilities. He did not believe that the City will be able to compete with other local facilities that may be building around Morgan Hill. He noted that this is 2.5 acres of land, and that he would like to see these acres developed to meet the needs of this community. He stated that he was not interested in economic development; noting that there are no documents in front of him to suggest that there are economic benefits from any of the City’s facilities. He recommended that the Council focus on the youth of the community and have the facilities managed by these youth organizations. He recommended that the Council give staff time to work with the youth groups; returning with a proposal for the youth groups to manage the facility.

Action: *Council Member Carr made a motion, seconded by Council Member Sellers: 1) to allocate no more than \$3,000 to review other possible designs; and 2) direct the Parks & Recreation Commission to review the question of “multi use fields” versus “specific use fields.”*

Council Member Carr did not want the Parks & Recreation Commission to redo the work that was done by a subcommittee over an 18-month period as a significant amount of work, time and effort was put forth. He stated that he would like to take a look at cost recovery to make sure that the City is not setting any non profit organizations up for failure. He wants to make sure that the complex is designed with cost recovery in mind. He noted that a Parks & Recreation Commissioner stated, at the last meeting, that the outdoor sports complex should accommodate the greatest needs, in terms of numbers. He felt that this comment hits the heart of what the Council was looking at when it decided to purchase the property. He acknowledged that the City’s emphasis should be on youth, and that the greatest number of Morgan Hill participants.

Mayor Pro Tempore Tate felt the Council was moving out of sequence. Should the Coliseum Recreation Group decide not to move forward with the project, he did not know why the City should spend \$3,000. He felt the Council needs to decide whether it will adopt the deal points as presented so that CRG will know whether they want to proceed or not. Based on their decisions, the Council can study orientation of buildings.

Council Member Carr agreed to amend his motion to stipulate that review of the orientation of the building is not to proceed until such time the Council receives clarification whether or not the City would be moving forward with the concept before the Council this evening.

Action: *Council Member Carr made a motion, seconded by Council Member Sellers, to qualify the motion to stipulate that review of the orientation of the building is not to proceed until such time it is known whether the concept before the Council moves forward.*

Vote: *The qualified motion carried unanimously (5-0).*

Action: *Council Member Carr made a motion, seconded by Council Member Sellers, to direct the leaders of the two youth sports group to work together; returning to the Council no later than October 2005 with a plan on how to resolve the governance issue, and a proposed single entity to which the City can contract to operate the facility.*

Council Member Carr felt that the two youth sports groups need to look at the original Council goals in purchasing the property and what it wants to do in moving forward with an outdoor sports complex. The groups are to indicate why they want to operate the facility and how the groups can come together with a joint management governance model in order to do so.

Mayor Pro Tempore Tate felt that the groups need to know what the deal points are before they can proceed. He did not believe the Council can delay the decision on the deal points beyond this evening’s meeting.

Council Member Carr agreed that both groups need to know the deal points, and what will be an important qualifier. He felt that the two sports group will need as much time to agree on a joint management governance. He stated that whether or not the City has a private partner, the City will have an outdoor sports complex. He felt that the Council wants to contract with a non profit youth sports provider to perform the maintenance and operation of the facility. He felt that there may be changes down the road, but recommended that the City start working on the governance issue and see how they can be brought together. He clarified that the motion would stipulate operation of the facility with a private organization, public, and/or both; depending on the outcome.

Vote: *The motion carried unanimously (5-0).*

Mayor Kennedy recommended that the Council review the deal points as a package unless there are objections to specific deal points.

Mayor Pro Tempore Tate noted that the PRC and staff recommend that all costs and fees be paid and that the Coliseum Recreation Group have stated that this is one deal point they cannot accept.

Council Member Sellers stated that he would agree to move forward with the deal points if there is creativity in figuring out options for the fee structure such that it makes sense to all parties.

Council Member Grzan said that should the Council not be able to get past this deal point, you cannot proceed with the other deal points. He noted that it was Council's direction to not have this facility cost the city any more dollars. If CRG is unable to pay the development fees and are asking the City to pay the fees, he did not know how the Council can proceed.

City Manager Tewes referred to page 4, noting that staff suggests that the private company is responsible for applying for the land use entitlements, environmental assessment, site review permit, building permits and payment of all fees in accordance with the municipal code. He stated that it is the concept that private development bears the cost of private development and not the public. He said that there may be ways in which the payment of fees could be structured to address Council Member Sellers recommendation for creativity. The Council could amend the deal point to reflect creativity as long as it is made clear that it is not the taxpayers who are paying the cost of private development.

Council Member Carr noted that the Council has previously looked at private development in town and came up with ways to finance fees, and accommodate fee structures, such that taxpayers did not front the bill. The Council has been creative in the past and did a great job not to inhibit economic development. He felt the Council could be creative with this project such that the taxpayers are not paying the cost for private development. He recommended that the City figure out a financing structure or long term financing structure that might be accommodated by CRG. This would allow the City to move forward on this deal point. He stated that he would be supportive of trying to find some creativity within this deal point with the assumption that the fees are the private company's responsibility and not the taxpayers' responsibility. The City would be looking at ways to accommodate the fees.

Action: *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Tate, to **approve** the deal points as recommended by the City Manager for the ground lease with a private commercial venture (blue matrix), with the understanding that the City will be as creative as possible in coming up with opportunities for the payment of the development fees.*

Council Member Carr indicated that the Parks & Recreation Commission felt that parking should not be the youth sports groups' responsibility, but that it be the City's responsibility. He noted that staff believes the sports groups should be responsible for the parking because they will reap benefits from parking with the possibility of charging parking for certain events. Doing so would provide them with an opportunity to collect funds for operation and maintenance. He recommended that the Council make a decision as to who will be responsible for the parking. He said that maintenance of a parking lot would be significant and a step above what the non profit groups can do. Maintaining the fields is one thing, and maintaining the parking lot would be a different issue. It needs to be clarified what the maintenance of the parking lot would entail.

City Manger Tewes said that staff believes there should be a connection between the responsibility for the maintenance and the opportunity to raise revenues. He acknowledged that the parking lot is in bad shape as it has not been maintained and drainage of water into the parking structure has created problems. Staff believes that the management of the entire complex impacts the need for maintenance of the parking lot. The need for maintenance can be minimized if the entire facility can be well managed. He said that the opportunity to raise money exists. He informed the Council that the youth sports groups want to manage the complex and that it is their belief that they can obtain, through private contracts and volunteer work, lower costs to maintain the facility versus the City. If the City was to maintain the parking lot, it would be inconsistent with one of the Council's goal that this would be a full cost recovery facility. Therefore, the City would need to budget general funds to meet the maintenance costs should the City take on this responsibility.

Council Member Sellers recommended moving forward with the City Manager's recommended deal points with the clarification on maintenance of the parking lot and the fee structure.

Council Member Grzan stated that he sees conflicts in the deal points between the different groups. He would like to see reconciliation between the City Manager's recommendation and the PRC recommendation. He would like to take the time needed to do this project right. He would hate to move forward and spend money only to find out the City did not do a good job. He stated that he would like the deal points addressed and reconciled.

Mayor Pro Tempore Tate said that he reviewed the PRC recommendation. It was his belief that the PRC recommendations contained a lot of clarification or adding information to what is being recommended by the City Manager. He did not believe that the deal points contain absolute resolution with staff's recommendation. Should the Council move forward with a general approach, he did not believe that the Council would be supporting one or the other recommendations.

City Manager Tewes said that staff did not reconcile staff's and the PRC recommendations. He said that it is staff's belief that its recommendations are appropriate.

Council Member Carr said that there was a lot of detail presented this evening. He stated that he is comfortable moving forward with the motion and the clarifications. He felt the PRC helped to clarify several items in the comments they made and brought out a lot of issues in the discussion they had with the youth sports group. He appreciates the concern about moving too fast, however, he felt the details were before the Council.

Vote: *The motion carried 5-0. The motion included two clarifications associated with the creativity of development fee payments and parking lot maintenance.*

Council Member Carr stated that he wanted to make sure the City accommodates groups that are not being accommodated in the outdoor sports complex through other city fields or School District fields. He recommended the City look at this concern comprehensively. He wanted to make sure that facilities are being used appropriately. If there are areas that the City needs to spend capital funds to make sure that the fields accommodate sports groups, these issues should work their way to the Council so that they can be considered; especially as the Council thinks about what is left in the RDA and other capital dollars. It may not be that the City is accommodating the greatest need on this acreage but is accommodating them through other City-owned or school district assets, through a partnership in order to meet all needs.

Council Member Grzan noted that there are computers and systems out there that can manage entire ball fields that would make sure that facilities are used to the fullest extent possible.

Council Member Carr indicated that he and Mayor Pro Tempore Tate, through the Public Safety & Community Services and the City-School Liaison Committees, could work with the School District toward a partnership for the use of facilities. He noted that the majority of these assets are owned by the School District, and that these assets need to be incorporated into the overall plan.

City Manager Tewes said that based on Council action, staff will advise the sports groups of the deal points adopted by the Council and the direction that the groups get together and develop a single proposal that addresses the Council's objectives; in accordance with the deal points. Staff to relay the deal points to the Coliseum Recreation Group and provide them with the opportunity to indicate the extent they would accept or reject the deal points. Staff to report to the Council the results of the acceptance or rejection of the deal points. Should the Coliseum Recreation Group accept the deal points, they are to provide the detailed information that was not provided as part of their initial proposal. This information would be necessary in order to make a recommendation on whether or not to proceed with an exclusive right to negotiate. Staff will contact the CYSA and negotiate an extension in accordance with Council direction. Staff will advise the City's architect, Mr. Stienmetz, to stand by regarding the review of the realignment of the private development until such time the City hears from the Coliseum Recreation Group as to their interest in moving forward. Staff is to find a common system for scheduling fields that would include the new fields at the outdoor sports complex, existing fields and School District fields. He said that he would be asking the Chamber of Commerce to provide additional

information from the one remaining hotel. This information will be overlaid with the sports schedule. Staff is to provide the Council with a reasonable estimate on the economic impacts of the CYSA proposal.

Mayor Kennedy thanked the Parks & Recreation Commission and the sports teams for their efforts.

Jeff Bernardini, speaking on behalf of the Morgan Hill Youth Sports Alliance, distributed a letter of intent and expense expectations from the outdoor sports complex to the Council.

Action: *On a motion by Mayor Pro Tempore/Vice-chairman Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **agreed to extend** the meeting curfew of 11:00 p.m. to midnight.*

21. RESOLUTION ALLOWING FOR INCLUSION OF THE UNINCORPORATED PORTION OF HOLIDAY LAKE ESTATES WITHIN THE CITY'S URBAN SERVICE AREA – Resolution No. 5936

Director of Community Development Molloy Previsich presented the staff report, recommending that the Council adopt a resolution that would allow for the inclusion of the unincorporated portion of Holiday Lake Estates within the City's Urban Service Area, and commit matching funds to assist with a sewer engineering and assessment district formation study at a cost not to exceed \$15,000.

Mayor Kennedy opened the floor to public comment.

John Milner, resident of Holiday Lake Estates and member of the Holiday Lake Estates Maintenance Association (HEMA) Board, indicated that HEMA will continue its responsibility of the roads and ditches. He stated that there are a number of homes close to Lake Anderson, and one of the reason LAFCo is interested in having a plan put together to address sewer versus the septic issue. He said that HEMA is looking toward building consensus among the homeowners to find a mechanism for funding the sewer system throughout Unit 1. He said that initial estimates have been conducted and that it is a sizeable assessment per home. He stated his support of the recommended action and urged the Council to adopt the resolution. He said that the additional \$15,000 in matching funds will help HEMA to prepare a study to help the homeowners understand what this means to them and grasp the costs associated with this. Also, to understand the different funding mechanisms that can be put together.

No further comments were offered.

Council Member Sellers said that the Public Safety & Community Services Committee had the opportunity to review this issue and was pleased that HEMA is in agreement.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5936, Allowing for and Requesting that LAFCO Include the Unincorporated Portion of Holiday Lake Estates within the City's Urban Services Area (USA).*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Committed to Provide**, as Matching Funds to Property Owner Funds, \$15,000 from the Sewer Fund to Assist Holiday Lake Estates Property Owners with Costs Associated with Preparation of a Preliminary Engineering and Assessment District Formation Study.*

Redevelopment Agency and City Council Action

OTHER BUSINESS:

Agency/Council Member Sellers recommended that the Agency Board/City Council consider item 23 at this time.

Action: *It was the consensus of the Agency Board/City Council to **consider** item 23 at this time.*

23. MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) FUNDING EXTENSION

Director of Business Assistance and Housing Services Toy presented the staff report on a request from the Downtown Association for an additional year of funding at \$97,500 and a request to roll over the loan given to the Association for the Property Based Improvement District (PBID) in the downtown area last year. He stated that staff recommends approval of the funding request.

Mayor/Chairman Kennedy opened the floor to public comment.

Dan Craig, Morgan Hill Downtown Association Executive Director, indicated that a lot of hard work was put forth with the PBID. He felt that the challenge was to raise enough money under the PBID to raise the Association to a new level and do more. During the PBID process, the Association found it necessary to expand the boundary of the area as the original area had too much to bear. The Association also reduced the budget, and yet maintained the scope of work the survey indicated was important. Also, during the process, it was found that the peripheral expansion area was not prepared to pay at the core area level. Therefore, the Association created two benefit zones: a premium and a standard zone. The association tried to do its best to get an assessment level that was feasible and doable. He noted that the Association had petitions signed that equaled \$41,000; consisting of 19 property owners. He felt that there is a commitment and that a significant headway was made toward a PBID. Given another chance, there will be a plan for restructuring and reconvening a meeting with property owners that may result in a positive outcome. He requested the Agency Board provide another year of funding.

Dan Ehrler, Executive Director of the Morgan Hill Chamber of Commerce, informed the Council that the Chamber Board of Directors voted unanimously to support the request for the continuation of funding for the Morgan Hill Downtown Association. This vote affirms the Chamber's belief that it is imperative that the Downtown Association maintains its structure, leadership and momentum. The Chamber agrees that with the additional extension of funding, the Downtown Association's story can be retold with a better result. He stated that the viability and future of the downtown depends on a structure

that can be responsive to the focus area. He indicated that the Chamber will do everything it can to assist the Downtown Association. He informed the Council that the Chamber has not taken a position on the PBID as it has not come before the Chamber Board for specific action.

Gary Walton felt that downtowns are important to communities. He stated that the downtown is a destination and an economic engine. He acknowledged that the downtown is not all that it can be and has a long way to go, however, the potential exists. He felt that the investment the City has made in the Downtown Association will assist the downtown. He stated that individuals are committed and have a passion for what they want to create in the community. He thanked the Council for the support given to the downtown and recommended that the Council continue to work with the Downtown Association to achieve the downtown's potential.

Vice-chair/Mayor Pro Tempore Tate inquired how the City can assist in making sure the Downtown Association does not come back with the same request next year.

Mr. Walton felt the Downtown Association needs to make an objective determination whether it can be fully funded. He felt that the partnership will need to continue. He said that a PBID would be possible at some level. It may be that the Downtown Association can provide half the funding and the City may need to assist with the other half. He noted that the objective is to grow the downtown. When commercial and residential development grows in the downtown, the Downtown Association will have less need for City assistance. He noted that the money the City would be investing would go toward economic development and that a partnership is needed. He indicated that the Downtown Association will come before the Council and provide updates on activities and problems on a monthly basis.

Leslie Miles, former president of the Downtown Association, stated that it is important to have funding at this time. She indicated that she and her husband have invested in the downtown over the past few years. She said that the downtown manager provides emphases on economic development, coordinating with the City and other agencies, especially with downtown events and constructions. She stated that the Downtown Association is working toward the passage of the PBID. Exclusive of the PBID approach, she said the downtown manager is working with the City and for the City.

No further comments were offered.

Mayor Pro Tempore Tate stated his support of the Downtown Association and what they are trying to do. However, he was fearful that a year from now, the Downtown Association would go through another PBID process with businesses believing the City will bail the Association out again. He stated that he likes the approach and the admission that the Downtown Association made that they may not be self sufficient; necessitating the City's continued partnership. He stated that he would like to find a way to send a message in support of the request for funding and that the Downtown Association has to take on some responsibility to get the PBID passed. It was his belief that the partnership is the way to pass the BPID. He suggested that 95% funding be considered to clearly send a message that the City cannot fund the entire Downtown Association.

Council Member Grzan stated that he is supportive of the funding request and in assisting the Downtown Association in its effort. He acknowledged that this is a lot of money to appropriate in difficult economic times. However, he would like to show support for the downtown.

Mayor Kennedy stated that he would be supporting the funding request. He understands that there are a lot of challenges ahead, and thanked the Downtown Association for what it has done and will continue to do.

Council Member Carr said that it takes more than one time to get support to move forward with significant visions and significant projects. He stated his support of the efforts of the Downtown Association and that he supports the City's continued partnership. He agreed that the Council/Agency Board needs to send a message that the City's taxpayers are not going to bail everyone out all the time as the City does not have an endless pot. It is his hope that the Downtown Association uses all means to communicate the importance for downtown groups to become involved and why the PBID is an important process. He recommended that the Downtown Association go back and review how it will improve the process. Further, that the Downtown Association look at the PBID itself. He said that he received comments about the allocation of dollars and where these dollars would be spent. There was a suggestion that more individuals be brought into the mix and to make sure that all the needs of property and business owners are met. He said that he would agree to assist in these efforts.

Council Member Sellers appreciated all the comments made this evening. He stated that he has been supportive and has been a liaison to the Downtown Association Board. He stated that he would not have been supportive of the effort this evening if he did not have confidence in the board, the time and energy they dedicate toward the PBID, and the vision they have in place. He felt that everyone has the same goal: improving the downtown and minimizing the involvement of City funds. He was confident that the Downtown Association would achieve this.

Action: *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Grzan, the Agency Board/City Council unanimously (5-0) **Authorized** the Executive Director to Negotiate, Prepare, and Execute an Agreement with the MHDA in an amount not to Exceed \$97,500, Subject to Agency Counsel Review and Approval.*

Action: *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Grzan, the Agency Board/City Council unanimously (5-0) **Authorized** the Executive Director to Amend the Property Based Improvement District (PBID) Loan to MHDA to allow MHDA to use the Remaining Loan Proceeds for PBID Formation Activities in Fiscal Year 2005-2006.*

22. POLICY ISSUES RELATED TO RESIDENTIAL AND COMMERCIAL DEVELOPMENT IN DOWNTOWN

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the Community and Economic Development (CED) subcommittee recommends encouraging residential and commercial development in the downtown. The CED subcommittee addressed the impact of the

Residential Development Control System (RDCS) to the downtown. He said that the CED subcommittee believes that the downtown is in a key juncture where residential development is needed to revitalize the downtown. He indicated that the CED subcommittee has narrowed down options and recommends that the City Attorney provide an opinion as to whether residential units can be advanced from future years under the RDCS in order to be constructed as early as March 2007. He said that the CED subcommittee and Downtown Association believe that it would be prudent to await the results of the latest RDCS competition to be held in October 2005 before exploring any initiatives. He indicated that the CED subcommittee is also recommending that staff develop minimal submission requirements for the downtown as it relates to the RDCS. The CED subcommittee believes that impact fees could be inhibitors to commercial development in the downtown and recommend that staff be directed to look at developing a loan program, or that the Council consider ordinance revisions to minimize such fees. The CED subcommittee recognizes that funding for the programs identified is limited and has asked staff to put together a list of available funds that can be used for economic development activities. The funds could include \$700,000 in general unallocated redevelopment funds, the \$980,000 funds earmarked for the soccer complex and funds from economic development activities that are zeroed out. He said that staff has indicated that there is approximately \$2.5 million in funds available. The CED subcommittee is recommending that they be tasked with proceeding with a recommendation on the use of these funds.

Council Member Sellers said that although he believes the City may need to review and modify Measure C as it applies to the downtown in the future; he would like to take into account Mayor Pro Tempore Tate's comments and those of others who suggest the City take a look at what will happen in October 2005 with the RDCS application submittals before holding the discussion of modifying Measure C. He applauded staff for being creative in this endeavor. He stated that the CED subcommittee would like to ask the City Attorney if it is possible to advance units because it is vital to create a critical mass in the downtown. He recommended that a loan program be developed in order to defer costs for some of the smaller projects. He stated that the CED subcommittee would be looking at the overall economic development funding sources that remains available and determines the best allocation for these resources.

Mayor Pro Tempore Tate noted that the Public Safety & Community Services Committee is also endorsing the review of the \$980,000 to determine the best use of the funding pot.

Mayor/Chairman Kennedy opened the floor to public comment.

Ralph Lyle informed the Council that he was not representing the Planning Commission, but is expressing his own views. He stated that he is in support of downtown development, but not in support of a ballot measure. He did not believe that the direction for the downtown is to allocate 200 units in one year. It was his belief that the direction is to make sure that the downtown projects are fully allocated so that there are no uncertainties in the process, and that there are sufficient numbers to meet the market demands. It was his belief that the market would only absorb so many units in the downtown. If the City exceeds the numbers, he felt that it would create an imbalance in the plan. He did not know how the City could allocate 2009-10 allotments in 2007-08. He said that it has always been the intent of the growth control measure to award allocations evenly each year. He addressed the available allocations in the upcoming years. He said that there are solutions to assist downtown housing. He recommended the

following: 1) Council to reserve downtown and affordable allotments for 2009/2010. 2) For 2008/09, there are 7 unused micro and small project allotments. The Council could reassign these allotments to the downtown, canceling the competition for that year. 3) The Council could consider transferring some of the 60 affordable allotments from Fiscal Year 2008-09 to the downtown. 4) The Council could also consider changing the allotment year; consider exchanging allotments to a project ready to build versus granting extensions to building allocations. 5) The Council could consider the Planning Commission's recommendation to adopt policies to facilitate allocation exchanges. 6) The Council could strengthen the policy direction given to fully allocate a project, whenever possible. He felt that developers and banks would like to move forward cautiously with the first year of downtown development. Adopting some of the ideas he presented and moving forward with other actions taken by the Council would place the downtown in great shape. He felt that these suggestions would be better versus placing an initiative which, on the short term, would override something that has been developed over a long period of time and with much more public involvement; particularly in an election year that would have a small voter turnout.

Leslie Miles said that there needs to be an understanding of what the allotments are all about. She said that the allotments are about how many individuals will be in the community by year 2020. As you look at the downtown and the adjacent neighborhoods, it was felt that important for the Council and Planning Commission to visit the downtown to see what is taking place in the downtown. She said that there is a different type of family that moves into the downtown (e.g., 1 or 2 person families). She stated that the Downtown Association has expressed an interest in proceeding with Measure C this fall to see how it goes and reconvene to discuss a ballot measure if it does not work well. She wanted the Council to keep in mind that there is a difference in allotments and the number of people the city is ultimately looking for to reside in the community.

Director of Community Development Molloy Previsich informed the Council that at last night's Planning Commission meeting, the Commission discussed the matter of flexibility for downtown residential allocations. They discussed a memo prepared by staff that advised that Measure C was amended last year to allow the Council, if it chooses, to divide the allotments according to geography, price, development size, and phasing; including the timing of allotments required to complete a project. The Commission discussed the interpretation and findings that could be made to address the timing of allotments as well as the possibility of an exchange program and ballot measures. At the end of their discussion, the Commission felt that it would be a good idea to explore the timing interpretation within Measure C for flexibility and timing of allotments before placing a measure on the ballot. Once applications are filed in October, an applicant could request an adjustment of timing, if needed, to complete their project. The Council could make findings to adjust the timing of allocations.

No further comments were offered.

Council Member Carr said that the CED subcommittee looked at the barriers to competing against the goals of the Downtown Plan; specifically residential development. He said that there are fees charged to participate in the RDSCS competition. The CED subcommittee is suggesting a loan program for application and impact fees for residential and mixed used downtown projects. He felt that everyone understands that this is a different housing product than what has been built in Morgan Hill. If a

developer only receives half of the allocations needed, a downtown project would not move forward. He addressed the timelines and funding mechanisms that are needed for this type of development. He said that the CED subcommittee is suggesting that the Council ask the City Attorney to provide an opinion on whether the units can be advanced. He noted that Mr. Lyle said that there are 100 units available for the October 2005 competition for permits to be pulled in March 2007. He felt that this was a good start, but that this would not get the City where it wants to be. He wanted to know how the City could make another 100 allotments available for the next competition where permits can be pulled as quickly as possible to get to the point of seeing the residential units identified in the Downtown Plan built as soon as possible.

Action: *By consensus, the Council **supported** the loan program and **allocation** of funds for economic development activities.*

Council Member Sellers felt the Council needs to continue to evaluate the standards and criteria that will allow flexibility in design.

Mayor Kennedy recommended that a temporary staff position be assigned to help get the downtown projects through the RDCS process.

Council Member Sellers noted that staff offers to provide preliminary review of Measure C projects and recommended that downtown projects be encouraged to meet with staff and take advantage of the preliminary review process.

Mayor Kennedy recommended the Council take advantage of the work done by the Planning Commission, looking at exchanging allotments and addressing timing issues. This is to be folded into the work the Council is requesting staff to do.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **requested** that the Interim City Attorney provide an opinion on how the City can maximize residential units.*

City Council Action (continued)

OTHER BUSINESS:

24. APPOINTMENTS TO FILL VACANCIES ON THE ARCHTECTURAL REVIEW BOARD (ARB); LIBRARY, CULTURE & ARTS COMMISSION; MOBILE HOME RENT COMMISSION; AND PLANNING COMMISSION

Mayor Kennedy indicated that he distributed a letter to the Council that identifies his recommended appointments as follows: ARB: James Fruit; Rod Martin; and Jerry Pyle; Library, Culture & Arts Commission: Sylvia Cook; Mobile Home Rent Commission: Swanee Edward (at large vacancy) and Robert Koehler (owner/representative); and Planning Commission: Geno Acevedo, Robert Benich, and Mike Davenport.

Mayor Kennedy indicated that Robert Benich and Mike Davenport received the highest number of recommendations from the City Council and that Geno Acevedo and Kyle Baker received an equal number of recommendations to fill the third vacancy. He stated that it is his recommendation that Geno Acevedo be appointed based on his experience.

Council Member Sellers stated his support of Mayor Kennedy's recommended appointments with the exception of Planning Commission appointments. He said that the Council interviewed outstanding applicants. He expressed concern that Mr. Acevedo does not reside within the City Limits and that he is significantly involved with the City on a downtown project and with a non profit organization that is very involved in the community. He felt that there is a potential for these to become issues. He noted that there are extremely qualified applicants, particularly Mr. Baker, and that it was important to bring fresh blood to the Planning Commission. He recommended that Mr. Baker be considered for appointment to the Planning Commission.

Mayor Kennedy agreed that there were a lot of excellent candidates willing to serve on the Planning Commission. However, he noted that Mr. Acevedo has experience and is currently serving on the Planning Commission and that this swayed his decision.

Mayor Pro Tempore Tate stated his support in the reappointment of Mr. Acevedo to the Planning Commission as he brought different perspectives to the forum. He understands the concerns about potential conflicts of interest. However, he noted that other individuals may have conflicts of interest. He did not have a problem in appointing a non city resident. He acknowledged that Mr. Baker is also a qualified applicant.

Council Member Carr did not believe that the new process worked well as it extended the interview process. He felt that the time spent on talking about the qualities Council members want in commissioners was a discussion the Council should have held at the beginning of the recruitment process. He noted that not every Council member voted for 3 plus 1 in the planning commission appointment process. He followed the 3 plus 1 process. Had he not followed this process, he felt the outcome would have been different. He felt the Council was fixing a process that was not broken. He stated that he would like to return to the previous process, with some modifications. He said that he would have liked to see ranking of the applicants.

Mayor Kennedy felt that the process worked well and that the questions asked by Council members were relevant because the Council had time to discuss timely issues of concern. The fact that one of the applicants was the vice-chair to the Planning Commission and was ready to move to the Chair's role was disclosed.

Interim City Attorney Siegel suggested that the Council decide how long it wishes to continue its meeting.

Mayor Kennedy recommended continuation of the closed session item regarding performance evaluation. He recommended that the meeting curfew be extended by 15 minutes.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously **agreed** to extend the meeting curfew to 12:15 a.m.*

Mayor Pro Tempore Tate agreed that the plus 1 did not work. He felt the Council could design the questions to be asked in advance.

Mayor Kennedy stated that there were good comments made by the Council in the meeting prior to conducting the interviews (e.g., require incumbents to submit a complete application, identification of the qualities and traits of applicants, etc.).

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **ratified** the Mayor's appointment as follows: ARB: James Fruit, Rod Martin, and Jerry Pyle; Library, Culture & Arts Commission: Sylvia Cook; and Mobile Home Rent Commission: Swanee Edward (at large) and Robert Koehler (owner/representative).*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Mayor Kennedy, the City Council **ratified** the Mayor's appointment of Geno Acevedo, Robert Benich, and Mike Davenport to the Planning Commission. The motion carried 3-2 as follows: Ayes: Carr, Kennedy, Tate; Noes: Grzan, Sellers.*

25. PROPERTY TAX ADMINISTRATION GRANT PROGRAM (PTAP)

Mayor Kennedy presented the staff report, indicating that Santa Clara County Assessor Lawrence Stone requests that local jurisdictions contact State legislators to request continued support for the Property Tax Administration Grant Program funding.

Mayor Pro Tempore Tate indicated that the Finance & Audit Committee recommends that support letters be sent to legislators.

Council Member Carr inquired whether there was any concern or indication that these funds are being eliminated so that the vehicle license fees would come back to cities sooner.

Mayor Pro Tempore Tate responded that the Committee does not want to loose property taxes and wants to receive the vehicle license fees.

City Manager Tewes informed Council that the City received a check for its vehicle license fees today.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Directed** the Mayor to Send Letters to State Legislators Urging Continuation of the Property Tax Administration Grant Program.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Kennedy inquired whether the Calpine Bay Area Quality Air Management District is scheduled to make a presentation on August 3, 2005.

City Manger Tewes informed the Council that the Bay Area Air Quality District would be making a presentation on August 3. He indicated that he was not sure if the District's report would relate to Calpine.

Mayor Kennedy stated that the primary purpose for inviting the Bay Area Air Quality District was to ask them about the requirement for the installation of a monitoring station south of the Calpine plant. He said that that it was his understanding that this requirement has not been satisfied.

Council Member Grzan recommended that the Council consider holding a ½ day retreat to see where the Council is with regards to the goals and objectives it adopted in January 2005. He also has an item he would like to discuss with the Council.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

Due to the lateness in the hour, the City Council did not conduct closed sessions.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 12:10 a.m. in Memory of Michael Crocker.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK